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 COURT
 DISTRICT OF NEVADA
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2:12-cv-00016-JCM -CWH

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 BOYD GAMING CORPORATION

8
 9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 BOYD GAMING CORPORATION, a
 Nevada Corporation,

12 Plaintiff,

13 v.

14 KING ZULU, LLC, an unknown entity
 15 doing business in Saint Kitts and Nevis,

16 Defendant.
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Case No.

**FILED UNDER SEAL (MOTION TO
 TEMPORARILY FILE UNDER SEAL FILED
 CONCURRENTLY HEREWITH)**

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF**

- (1) Cybersquatting under 15 U.S.C. § 1125(d)
- (2) Trademark Infringement under 15 U.S.C. § 1114
- (3) Unfair Competition under 15 U.S.C. § 1125(a)
- (4) Trademark Dilution under 15 U.S.C. § 1125(c)
- (5) Common Law Trademark Infringement
- (6) Common Law Intentional Interference with Prospective Economic Advantage

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24 For its complaint against Defendant King Zulu, LLC ("Defendant"), Plaintiff Boyd
25 Gaming Corporation ("Boyd") alleges the following:

26 **NATURE OF THE CASE**

27 This is an action for cybersquatting, trademark infringement, unfair competition and
28 trademark dilution under federal statutes, with pendent common law claims for trademark

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1 infringement and intentional interference with prospective economic advantage. Boyd seeks
2 damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

3 JURISDICTION AND VENUE

4 1. This Court has subject matter jurisdiction over this case pursuant to
5 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Boyd's common
6 law claims pursuant to 28 U.S.C. § 1367(a).

7 2. This Court has personal jurisdiction over Defendant based upon the following:
8 (a) Defendant operates a website on the Internet that is accessible to residents of the State of
9 Nevada; (b) Defendant's domain name resolves to a website that is interactive in that it allows
10 Internet users to gamble; and (c) Defendant has committed tortious acts that Defendant knew or
11 should have known would cause injury to a resident in the State of Nevada.

12 3. Venue is proper in the unofficial Southern Division of the United States District
13 Court for the District of Nevada under 28 U.S.C. §§ 1391(b) and 1391(d).

14 PARTIES

15 4. Plaintiff Boyd Gaming Corporation is a Nevada corporation, which owns and
16 operates resort hotel casinos throughout the United States.

17 5. Upon information and belief, Defendant King Zulu, LLC, is an entity of unknown
18 origin doing business in Saint Kitts and Nevis which owns an Internet domain name used to
19 operate an online casino accessible to United States residents.

20 BOYD'S RIGHTS

21 6. The Imperial Palace Hotel & Casino ("Imperial Palace") opened in Las Vegas,
22 Nevada in 1979 on the Las Vegas Strip, and has continuously used the trademark IMPERIAL
23 PALACE in connection with its various services, including casino services.

24 7. Additionally, over the course of its over thirty year tenure as a Las Vegas
25 landmark, the Imperial Palace has continuously used its initials IP ("IP CASINO Mark") in
26 connection with its services, including casino services.

27 8. In 1997, Boyd's predecessors in interest expanded the Imperial Palace brand to
28 Biloxi, Mississippi, opening the Imperial Palace Hotel and Casino Biloxi.

1 9. In 2005, the Biloxi property was rebranded the IP Casino Resort & Spa ("IP
2 Casino"), expanding the use and fame of the IP CASINO Mark.

3 10. Boyd purchased the IP Casino in 2011 and acquired the exclusive rights in the IP
4 CASINO Mark, evidenced by Boyd's federal trademark registrations and applications listed in
5 Paragraph 12(a)-(j) below, including the right to sue for past infringement.

6 11. In sum, since the Imperial Palace opened in 1979, Boyd and its predecessors in
7 interest have continuously used the IP CASINO Mark in connection with a variety of goods and
8 services, including casino services, at the Imperial Palace and then at the IP Casino.

9 12. Boyd owns numerous federal trademark registrations and applications
10 incorporating the IP CASINO Mark on the Principal Register of the United States Patent and
11 Trademark Office ("USPTO") in connection with a variety of goods and services:

- 12 a) **IP (and Design)** for casino and hotel services (Reg. No. 1,870,042) in
13 International Classes 41 and 42.
- 14 b) **IP CASINO** for hotel, restaurant and bar services; entertainment services,
15 namely casino gaming; casino players rewards program, entertainment
16 services in the nature of presenting live musical performances; and spa
17 services (Ser. No. 85,332,474) in International Classes 41, 43, and 44.
- 18 c) **IP IMPERIAL PALACE HOTEL & CASINO · LAS VEGAS,**
19 **NEVADA (and Design)** for casino services, hotel, restaurant, bar, night
20 club, live entertainment, and retail gift store services (Reg. No. 3,830,583)
21 in International Classes 35, 41 and 43;
- 22 d) **IP REWARDS** for casino services featuring stored value membership cards
23 for redeeming cash, discounts, and other benefits (Reg. No. 3,622,977) in
24 International Class 41.
- 25 e) **IP REWARDS PREFERRED** for casino services featuring stored value
26 membership cards for redeeming cash, discounts, and other benefits (Reg.
27 No. 3,622,987) in International Class 41.

- f) **IP REWARDS ELITE** for casino services featuring stored value membership cards for redeeming cash, discounts, and other benefits (Reg. No. 3,622,985) in International Class 41.
- g) **IP REWARDS PREMIUM** for casino services featuring stored value membership cards for redeeming cash, discounts, and other benefits (Reg. No. 3,622,986) in International Class 41.
- h) **IP CASINO RESORT SPA MORE THAN YOU EXPECT!** for casino services and hotel, restaurant and bar services (Reg. No. 3,549,359) in International Classes 41 and 43.
- i) **IP CASINO RESORT SPA** for hotel, restaurant and bar services; entertainment services in the nature of presenting live musical performances and casino gaming; casino services and casino players rewards program; spa services (Ser. No. 85,332,492) in International Classes 41, 43, and 44.
- j) **IP CASINO RESORT · SPA (and Design)** for hotel, restaurant and bar services; entertainment services in the nature of presenting live musical performances and casino gaming; casino services and casino players rewards program; spa services (Ser. No. 85,332,513) in International Classes 41, 43, and 44.

13. Boyd and its predecessors in interest have protected the rights in the IP CASINO Mark by, among other things, asserting their rights against trademark and copyright infringers upon discovering infringing activity.

14. Boyd and its predecessors in interest have also invested substantial sums of money to advertise, promote and protect the IP CASINO Mark in print, broadcast and Internet media.

15. Additionally, Boyd and its predecessors in interest have made extensive use of the IP CASINO Mark on, among other things, signage, wearing apparel, souvenirs and promotional materials.

1 16. Since the Imperial Palace first opened in 1979 and the IP Casino opened in 1997,
2 millions of visitors throughout the United States and the world have visited the Imperial Palace
3 and IP Casino, which have continuously used the IP CASINO Mark, and numerous consumer
4 products and promotional items bearing the IP CASINO Mark have been sold or otherwise
5 distributed since that time.

6 17. Based on Boyd's trademark registrations, and it and its predecessors in interest's
7 extensive use, Boyd owns the exclusive right to use the IP CASINO Mark in connection with
8 casino and related services.

9 18. Through Boyd and its predecessors in interest's extensive use, the IP CASINO
10 Mark has become distinctive and famous in the United States and around the world for casino and
11 related services.

12 **DEFENDANT'S INFRINGING ACTIVITIES**

13 19. On or about November 3, 1999, Defendant registered the <ipcasino.com> Internet
14 domain name (the "Infringing Domain Name").

15 20. Some time after registration, Defendant directed the Infringing Domain Name to a
16 website that allows users to gamble online ("Infringing Website"). The Infringing Domain Name
17 is currently registered through GoDaddy, a registrar for domain names.

18 21. The home page of the Infringing Website directs users to the online casino called
19 Casino Lux.

20 22. The Casino Lux page of the Infringing Website is available in multiple languages,
21 including English, and allows users to download software from the website located at
22 <casinolux.com>.

23 23. Once users download the software, they can participate in live online gaming,
24 including slots, keno, poker and many other casino-style games for profit offered at brick-and-
25 mortar gaming establishments such as the Imperial Palace and IP Casino

26 24. Boyd recently became aware of Defendant's activities, in December 2011.

27 25. The Infringing Domain Name wholly consists of the famous IP CASINO Mark
28 and .com, the generic top-level domain.

1 26. The IP CASINO Mark had been distinctive and famous for almost two decades at
2 the time Defendant registered the Infringing Domain Name.

3 27. Defendant did not obtain Boyd or its predecessors in interest's consent or
4 authorization to register a domain name consisting of the IP CASINO Mark.

5 28. Upon information and belief, by registering and using a domain name containing
6 the IP CASINO Mark, Defendant was and is attempting to trade on the goodwill in the IP
7 CASINO Mark.

8 29. Upon information and belief, by registering and using a domain name consisting of
9 the IP CASINO Mark, and by using the same to direct users to an online gaming website,
10 Defendant was and is attempting to create an association Infringing Domain Name, the Infringing
11 Website and casino services associated with the IP CASINO Mark.

12 30. Upon information and belief, by registering and using a domain name containing
13 the IP CASINO Mark, Defendant was and is intending to entice customers away from visiting the
14 Imperial Palace and IP Casino using the IP CASINO name and direct users to instead gamble
15 through the Infringing Website in a manner that could harm the goodwill represented by the IP
16 CASINO Mark.

17 31. Upon information and belief, Defendant registered the Infringing Domain Name
18 with the bad faith intent to profit from the IP CASINO Mark.

19 32. Upon information and belief, Defendant has no trademark or other intellectual
20 property rights in the IP CASINO Mark.

21 33. Upon information and belief, Defendant has never used the Infringing Domain
22 Name in connection with the bona fide offering of any goods or services.

23 34. Upon information and belief, Defendant did not believe or have reasonable
24 grounds to believe that its use of the Infringing Domain Name was a fair use or otherwise lawful.

25 **COUNT I**

26 **(Cybersquatting – 15 U.S.C. § 1125(d))**

27 35. Boyd incorporates the allegations in the preceding paragraphs as if fully set forth
28 herein.

1 Boyd's federal registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. §
2 1114.

3 45. As a direct and proximate result of Defendant's infringement, Boyd and its
4 predecessors in interest have suffered, and Boyd will continue to suffer, monetary loss and
5 irreparable injury to its business, reputation, and goodwill.

6 COUNT III

7 **(Unfair Competition: False Designation of Origin – 15 U.S.C. § 1125(a)(1)(A))**

8 46. Boyd incorporates the allegations in the preceding paragraphs as if fully set forth
9 herein.

10 47. Defendant's use of a domain name that is confusingly similar to the IP CASINO
11 Mark constitutes intentional conduct by Defendant to make false designations of origin and false
12 descriptions about Defendant's services and commercial activities, in violation of 15 U.S.C. §
13 1125(a)(1)(A).

14 48. Defendant's actions have created a likelihood of confusion among consumers who
15 will falsely believe that the services Defendant offers through the Infringing Website are
16 produced by, or affiliated or associated with, Boyd or its predecessors in interest, when in fact
17 they are not.

18 49. Upon information and belief, Defendant acted knowingly, deliberately, and
19 willfully with the intent to trade on Boyd and its predecessors in interest's reputation.

20 50. Defendant's conduct is willful, wanton and egregious.

21 51. As a direct and proximate result of Defendant's infringement, Boyd and its
22 predecessors in interest have suffered, and Boyd will continue to suffer, monetary loss and
23 irreparable injury to its business, reputation, and goodwill.

24 COUNT IV

25 **(Federal Trademark Dilution – 15 U.S.C. § 1125(c))**

26 52. Boyd incorporates the allegations in the preceding paragraphs as if fully set forth
27 herein.

28 53. The IP CASINO Mark is inherently distinctive.

54. Based on Boyd and its predecessors in interest's continuous and extensive use of the IP CASINO Mark, the IP CASINO Mark is entitled to be recognized as famous under 15 U.S.C. § 1125(c).

COUNT V

59. Boyd incorporates the allegations in the preceding paragraphs as if fully set forth herein.

62. As a direct and proximate result of Defendant's infringement, Boyd and its predecessors in interest have suffered, and Boyd will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

COUNT VI

(Common Law Intentional Interference with Prospective Economic Advantage)

63. Boyd incorporates the allegations in the preceding paragraphs as if fully set forth herein.

64. Upon information and belief, at and since the time Defendant began using the IP CASINO Mark, Defendant knew and has known that Boyd and its predecessors in interest are in the business of providing casino services.

65. Upon information and belief, Defendant committed acts intended or designed to disrupt Boyd and its predecessors in interest's prospective economic advantage arising from advertising and/or providing these services.

66. Defendant's actions have disrupted or are intended to disrupt Boyd and its predecessors in interest's business by, among other things, enticing customers away from visiting the Imperial Palace and IP Casino using the IP CASINO Mark and directing users to instead gamble through the Infringing Website.

67. Defendant has no legal right, privilege or justification for this conduct.

68. As a direct and proximate result of Defendant's infringement, Boyd and its predecessors in interest have suffered, and Boyd will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

69. Based on the intentional, willful and malicious nature of Defendant's actions, Boyd is entitled to recover monetary damages, exemplary or punitive damages and reasonable attorneys' fees and costs incurred in connection with this action.

PRAYER FOR RELIEF

WHEREFORE, Boyd respectfully prays that the Court grant the following relief:

A. A preliminary and permanent injunction prohibiting Defendant, Defendant's respective officers, agents, servants, employees and/or all persons acting in concert or

1 participation with Defendant, from: (1) using the IP CASINO Mark or confusingly similar
2 variations thereof, alone or in combination with any other letters, words, letter strings, phrases or
3 designs, in commerce or in connection with any business or for any purpose whatsoever
4 (including, but not limited to, on websites, in domain names, in hidden text and metatags); and (2)
5 registering or trafficking in any domain names containing the IP CASINO Mark or confusingly
6 similar variations thereof, alone or in combination with any other letters, words, phrases or
7 designs;

8 B. A permanent injunction requiring the current domain name registrar to transfer the
9 <ipcasino.com> Internet domain name to Boyd;

10 C. An award of compensatory, consequential, statutory, exemplary, and/or punitive
11 damages to Boyd in an amount to be determined at trial;

12 D. An award of interest, costs and attorneys' fees incurred by Boyd in prosecuting
13 this action pursuant to 15 U.S.C. § 117(a)(3); and

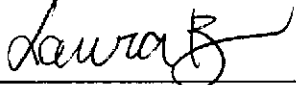
14 E. All other relief to which Boyd is entitled.

15 DATED this 5th day of January, 2012.

Respectfully submitted,

16 BROWNSTEIN HYATT FARBER
17 SCHRECK, LLP

18 By:


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